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MICROSOFT CORPORATION
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 MICROSOFT CORPORATION, a
Washington corporation

12 Plaintiff,

13 v.
14

15 DAILY TRADING a/k/a
DAILYTRONIC and GOLDENSOFTS,
a business of unknown classification;
16 NAVID MOHAMMADHASHEMI, an
individual d/b/a DAILY TRADING,
17 DAILYTRONIC, and
GOLDENSOFTS; and DOES 1-5,
18 Defendants.
19
20

Case No. 8:17-cv-00105

COMPLAINT FOR:

(1) COPYRIGHT INFRINGEMENT;
(2) FEDERAL TRADEMARK
INFRINGEMENT;
(3) FALSE DESIGNATION OF
ORIGIN, FALSE DESCRIPTION
AND FALSE REPRESENTATION;
(4) COMMON LAW UNFAIR
COMPETITION;
(5) IMPOSITION OF A
CONSTRUCTIVE TRUST; AND
(6) AN ACCOUNTING

21 Microsoft Corporation ("Microsoft") brings this action against defendants
22 Daily Trading also known as DailyTronic and Goldensofts, a business of unknown
23 classification; Navid Mohammadhashemi, an individual who does business as Daily
24 Trading, DailyTronic and Goldensofts; and Does 1-5, (collectively "Defendants")
25 alleging that they engaged in copyright and trademark infringement; false
26 designation of origin, false description and representation; and unfair competition.
27 Microsoft seeks damages, an accounting, the imposition of a constructive trust upon
28

1 Defendants' illegal profits, and injunctive relief.

2 **THE PARTIES**

3 1. Microsoft is a Washington corporation with its principal place of
4 business located in Redmond, Washington. Microsoft develops, markets,
5 distributes and licenses computer software.

6 2. Upon information and belief, defendant Daily Trading also known as
7 DailyTronic and Goldensofts ("Daily Trading") is a business of unknown
8 classification that does business in Orange County, California. Daily Trading is
9 engaged in the business of advertising, marketing, copying, offering, and/or
10 distributing software, including purported Microsoft software.

11 3. Upon information and belief, Navid Mohammadhashemi does business
12 as, owns, operates, and/or otherwise controls the actions of Daily Trading. Upon
13 information and belief, Navid Mohammadhashemi transacts substantial business in
14 this district. Upon information and belief, Navid Mohammadhashemi (a)
15 personally participated in and/or (b) had the right and ability to supervise, direct
16 and control the wrongful conduct alleged in this Complaint, and (c) derived direct
17 financial benefit from that wrongful conduct. Upon information and belief, Navid
18 Mohammadhashemi also (a) has an apparent partnership or authority to bind Daily
19 Trading in transactions, or (b) exercised joint ownership or control over the
20 infringing items alleged in this Complaint.

21 4. Upon information and belief, Does 1 through 5 (a) personally
22 participated in and/or (b) had the right and ability to supervise, direct and control
23 the wrongful conduct alleged in this Complaint, and (c) derived direct financial
24 benefit from that wrongful conduct. Upon information and belief, Does 1 through 5
25 (a) have an apparent partnership or authority to bind Daily Trading in transactions,
26 or (b) exercised joint ownership or control over the infringing items alleged in this
27 Complaint. Upon information and belief, Does 1 through 5 are individuals or
28 entities that transact substantial business in this district.

1 5. Upon information and belief, each of the Defendants was, at all times
2 mentioned in this Complaint, acting as the agent, employee, or alter ego of every
3 other defendant, and in doing the things mentioned herein, was acting within the
4 course and scope of such agency, employment, or other relationship and with
5 knowledge and consent of each of the other Defendants.

6 **JURISDICTION**

7 6. This Court has subject matter jurisdiction over Microsoft's claims for
8 trademark infringement, copyright infringement, and related claims pursuant to 15
9 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

10 7. This Court has supplemental jurisdiction over Microsoft's claims
11 arising under the laws of California pursuant to 28 U.S.C. § 1367(a) because these
12 claims are so related to Microsoft's claims under federal law that they form part of
13 the same case or controversy and derive from a common nucleus of operative fact.

14 **VENUE**

15 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and §
16 1400(a) because (a) Defendants reside in the Central District of California, and/or
17 (b) a substantial part of the events giving rise to Microsoft's claims occurred in the
18 Central District of California.

19 **FACTS COMMON TO ALL CLAIMS**

20 9. Microsoft develops, advertises, markets, distributes, and/or licenses a
21 number of computer software programs and associated proprietary packaging and
22 materials such as user's guides, user's manuals, end user license agreements,
23 Certificates of Authenticity, product keys and other software components.

24 10. Windows 7 Professional: One of the software programs that Microsoft
25 has developed, advertises, markets, distributes, and licenses is a software package
26 known as Microsoft Windows 7 ("Windows 7"). Windows 7 is an operating
27 system for desktop and laptop systems. Microsoft holds a valid copyright in
28 Windows 7 (including text, editing, artwork, computer program, and audio) that

1 was duly and properly registered with the United States Copyright Office. A true
2 and correct copy of the Registration Certificate for Microsoft Windows 7, bearing
3 the number TX 7-009-361, is attached hereto as Exhibit 1 and is incorporated by
4 reference.

5 11. Microsoft has also duly and properly registered a number of
6 trademarks and a service mark in the United States Patent and Trademark Office on
7 the Principal Register, including, but not limited to:

- 8 A. "MICROSOFT," Trademark and Service Mark Registration No.
9 1,200,236;
- 10 B. "WINDOWS," Trademark Registration No. 1,872,264;
- 11 C. COLORED FLAG DESIGN, Trademark Registration No.
12 2,744,843;
- 13 D. COLORED FLAG START BUTTON, Trademark Registration
14 No. 3,361,017;

15 True and correct copies of the Trademark Registrations for A through D
16 above are attached hereto as Exhibits 2 through 5, respectively, and are
17 incorporated by reference.

18 **Defendants' Infringement**

19 12. On information and belief, Defendants advertised, marketed, copied,
20 offered, and/or distributed counterfeit and infringing copies of Microsoft software
21 and/or components, despite having notice that their conduct infringed Microsoft's
22 copyrights, trademarks and/or service mark.

23 13. On information and belief, Defendants advertise, market, copy, offer,
24 and/or distribute purported Microsoft software and related components. In their
25 website advertisements, Defendants use copies of Microsoft's trademarks and
26 copyrighted works without authorization, misappropriating and/or infringing
27 Microsoft's copyrights, advertising ideas, style of doing business, slogans,
28 trademarks and/or service mark. Defendants indicate that they are distributing

1 genuine Microsoft items. However, the Microsoft software and/or related
2 components distributed by Defendants are actually counterfeit and infringing.

3 14. In October 2014 and July 2015, Defendants distributed to their
4 customers counterfeit and infringing Windows 7 software.

5 15. In June and August 2016, Defendants distributed to investigators
6 counterfeit and infringing Windows 7 software.

7 16. On information and belief, these are not isolated incidents; rather,
8 Defendants advertise, market, copy, offer, and/or distribute unauthorized copies of
9 a variety of Microsoft software and/or related components.

10 17. On information and belief, Defendants have been and continue to be
11 involved in advertising, marketing, copying, offering, and/or distributing
12 counterfeit and infringing copies of Microsoft's software and/or related components
13 to unidentified persons or entities.

14 18. On information and belief, Defendants have committed and are
15 continuing to commit acts of copyright and trademark infringement against
16 Microsoft. On information and belief, at a minimum, Defendants were willfully
17 blind and acted in reckless disregard of Microsoft's registered copyrights,
18 trademarks and service marks.

19 19. On information and belief, Microsoft has been harmed by Defendants'
20 activities, including their advertising activities and unauthorized use of Microsoft's
21 copyright protected material, and the unauthorized use of Microsoft's marks to
22 describe the items that Defendants are distributing.

23 **First Claim**

24 **[Copyright Infringement – 17 U.S.C. § 501, et seq.]**

25 **Against Defendants**

26 20. Microsoft repeats and incorporates by this reference each and every
27 allegation set forth in paragraphs 1 through 19, inclusive.

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1 21. Microsoft is the sole owner of numerous copyrights, including but not
2 limited to Microsoft Windows 7, and is the sole owner of the corresponding
3 copyright and Certificate of Registration.

4 22. Defendants have infringed the copyrights in Microsoft's software
5 and/or related components, including but not limited to Microsoft Windows 7, by
6 advertising, marketing, copying, offering, and/or distributing infringing materials in
7 the United States of America without approval or authorization from Microsoft.

8 23. At a minimum, Defendants acted with willful blindness to and in
9 reckless disregard of Microsoft's registered copyrights.

10 24. As a result of their wrongful conduct, Defendants are liable to
11 Microsoft for direct, contributory and/or vicarious copyright infringement. 17
12 U.S.C. § 501. Microsoft has suffered damages. Microsoft is entitled to recover
13 damages, which include any and all profits Defendants have made as a result of
14 their wrongful conduct. 17 U.S.C. § 504. Alternatively, Microsoft is entitled to
15 statutory damages under 17 U.S.C. § 504(c).

16 25. In addition, for the reasons set forth above, the award of statutory
17 damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

18 26. Microsoft is also entitled to injunctive relief pursuant to 17 U.S.C. §
19 502 and to an order impounding any and all infringing materials pursuant to 17
20 U.S.C. § 503. Microsoft has no adequate remedy at law for Defendants' wrongful
21 conduct because, among other things, (a) Microsoft's copyrights are unique and
22 valuable property which have no readily determinable market value, (b)
23 Defendants' infringement harms Microsoft such that Microsoft could not be made
24 whole by any monetary award, and (c) Defendants' wrongful conduct, and the
25 resulting damage to Microsoft, is continuing.

26 27. Microsoft is also entitled to recover its attorneys' fees and costs of suit.
27 17 U.S.C. § 505.

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Second Claim

**[Trademark Infringement – 15 U.S.C. § 1114]
Against Defendants**

28. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 27, inclusive.

29. Defendants' activities constitute infringement of Microsoft's federally registered trademarks and service mark in violation of the Lanham Trademark Act, including but not limited to 15 U.S.C. § 1114(1).

30. Because Microsoft advertises, markets, distributes, and licenses its software and/or related components under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software and/or related components are distinguished from the software and related items of others in the same or related fields.

31. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software and/or related components or services of Microsoft.

32. The infringing materials that Defendants have and are continuing to advertise, market, copy, offer, and/or distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

33. Further, Defendants' activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendants are advertising, marketing, copying, offering, and/or distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees, and the public.

34. Upon information and belief, Defendants advertised, marketed, copied, offered and/or distributed infringing material with the purposes of misleading or confusing customers and the public as to the origin and authenticity of the infringing materials and of trading upon Microsoft's business reputation.

1 35. Defendants had reason to know about infringement of Microsoft's
2 federally registered trademarks and service mark and caused, induced, or materially
3 contributed to it.

4 36. At a minimum, Defendants acted with willful blindness to and in
5 reckless disregard of Microsoft's registered marks.

6 37. As a result of their wrongful conduct, Defendants are liable to
7 Microsoft for direct, contributory and/or vicarious trademark infringement. 15
8 U.S.C. § 1114(1). Microsoft has suffered damages. Microsoft is entitled to recover
9 damages, which include any and all profits Defendants have made as a result of
10 their wrongful conduct. 15 U.S.C. § 1117(a).

11 38. In addition, because of Defendants' infringement of Microsoft's
12 trademarks and service mark as described above, the award of actual damages and
13 profits should be trebled pursuant to 15 U.S.C. § 1117(b). Alternatively, Microsoft
14 is entitled to statutory damages under 15 U.S.C. § 1117(c).

15 39. Microsoft is also entitled to injunctive relief pursuant to 15 U.S.C. §
16 1116(a) and to an order compelling the impounding of all infringing materials
17 advertised, marketed, copied, offered and/or distributed by Defendants pursuant to
18 15 U.S.C. § 1116, subsections (a) and (d)(1)(A). Microsoft has no adequate remedy
19 at law for Defendants' wrongful conduct because, among other things, (a)
20 Microsoft's trademarks and service mark are unique and valuable property which
21 have no readily determinable market value, (b) Defendants' infringement
22 constitutes harm to Microsoft's such that Microsoft could not be made whole by
23 any monetary award, (c) if Defendants' wrongful conduct is allowed to continue,
24 the public is likely to become further confused, mistaken, or deceived as to the
25 source, origin or authenticity of the infringing materials, and (d) Defendants'
26 wrongful conduct, and the resulting damage to Microsoft, is continuing.

27 40. Microsoft is also entitled to recover its attorneys' fees and costs of suit.
28 15 U.S.C. § 1117.

Third Claim

**[False Designation Of Origin, False Description And Representation –
15 U.S.C. § 1125 et seq.]
Against Defendants**

41. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 40, inclusive.

42. Because Microsoft advertises, markets, distributes, and licenses its software and/or related components under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software and/or related components are distinguished from the software or components of others in the same field or related fields.

43. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software and/or related components or services of Microsoft.

44. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software programs and/or related components.

45. Defendants' wrongful conduct includes the use of Microsoft's marks, name, and/or imitation visual designs, specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs, in connection with their goods and services.

46. Upon information and belief, Defendants engaged in such wrongful conduct with the purpose of misleading or confusing customers and the public as to the origin and authenticity of the goods and services advertised, marketed, copied, offered and/or distributed in connection with Microsoft's marks, name, and imitation visual designs, and of trading upon Microsoft's goodwill and business reputation. Defendants' conduct constitutes (a) false designation of origin, (b) false

1 or misleading description, and (c) false or misleading representation that the
2 imitation visual images originate from or are authorized by Microsoft, all in
3 violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

4 47. Defendants' wrongful conduct is likely to continue unless restrained
5 and enjoined.

6 48. As a result of Defendants' wrongful conduct, Microsoft has suffered
7 and will continue to suffer damages. Microsoft is entitled to injunctive relief and to
8 an order compelling the impounding of all imitation marks and visual designs being
9 used, advertised, marketed, copied, offered and/or distributed by Defendants.
10 Microsoft has no adequate remedy at law for Defendants' wrongful conduct
11 because, among other things, (a) Microsoft's marks, name and visual designs are
12 unique and valuable property which have no readily-determinable market value, (b)
13 Defendants' advertising, marketing, copying, and/or distribution of imitation visual
14 designs constitutes harm to Microsoft such that Microsoft could not be made whole
15 by any monetary award, and (c) Defendants' wrongful conduct, and the resulting
16 damage to Microsoft, are continuing.

17 **Fourth Claim**

18 **[California Common Law Unfair Competition]**
19 **Against Defendants**

20 49. Microsoft repeats and incorporates by this reference each and every
21 allegation set forth in paragraphs 1 through 48, inclusive.

22 50. The acts and conduct of Defendants as alleged above in this Complaint
23 constitute unfair competition pursuant to the common law of the State of California.

24 51. The acts and conduct of Defendants are likely to cause confusion and
25 mistake among customers, end users and the public as to the origin or association of
26 Defendants' infringing Microsoft software and/or related components. These acts
27 and conduct are likely to lead the public to conclude, incorrectly, that the infringing
28 Microsoft software and/or related components copied, distributed, solicited for

1 distribution, offered, advertised and marketed by Defendants originate with, are
2 sponsored by, or are authorized by Microsoft, to the damage and harm of Microsoft,
3 its licensees and the public.

4 52. Defendants' conduct as alleged above has damaged Microsoft and
5 resulted in an illicit gain of profit to Defendants in an amount that is unknown at the
6 present time.

7 **Fifth Claim**

8 **[For Imposition Of A Constructive Trust Upon Illegal Profits]**
9 **Against Defendants**

10 53. Microsoft repeats and incorporates by this reference each and every
11 allegation set forth in paragraphs 1 through 52, inclusive.

12 54. Defendants' conduct constitutes deceptive and wrongful conduct in the
13 nature of passing off the infringing materials as genuine Microsoft software and/or
14 related components approved or authorized by Microsoft.

15 55. By virtue of Defendants' wrongful conduct, Defendants have illegally
16 received money and profits that rightfully belong to Microsoft.

17 56. Upon information and belief, Defendants hold the illegally received
18 money and profits in the form of bank accounts, real property, or personal property
19 that can be located and traced.

20 57. Defendants hold the money and profits they have illegally received as
21 constructive trustees for the benefit of Microsoft.

22 **Sixth Claim**

23 **[Accounting]**

24 **Against Defendants**

25 58. Microsoft repeats and incorporates by this reference each and every
26 allegation set forth in paragraphs 1 through 57, inclusive.

27 59. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C.
28 §1117, to recover any and all profits of Defendants that are attributable to their acts
of infringement.

1 (e) that Defendants have otherwise injured the business reputation
2 and business of Microsoft by the acts and conduct set forth in this Complaint.

3 (2) That the Court issue injunctive relief against Defendants, and that
4 Defendants, their officers, agents, servants, employees, and all others in active
5 concert or participation with Defendants, be enjoined and restrained from:

6 (a) imitating, copying, or making any other infringing use or
7 infringing distribution of the software programs, components, end user license
8 agreements (“EULA”), Certificates of Authenticity (“COAs”) and/or items
9 protected by the following copyright Certificate Registration No.:

10 (1) TX 7-009-361 (“Windows 7”);
11 or the software programs, components and/or items protected by Microsoft’s
12 registered trademarks and service mark, including, but not limited to, the following
13 Trademark Registration Nos.:

14 (1) 1,200,236 (“MICROSOFT”);
15 (2) 1,872,264 (“WINDOWS”);
16 (3) 2,744,843 (COLORED FLAG DESIGN);
17 (4) 3,361,017 (COLORED FLAG START BUTTON);
18 and any other items or works now or hereafter protected by any Microsoft
19 trademark or copyright;

20 (b) manufacturing, assembling, producing, distributing, offering for
21 distribution, circulating, selling, offering for sale, advertising, importing,
22 promoting, or displaying any software program, component, EULA, COA and/or
23 item bearing any simulation, reproduction, counterfeit, copy, or colorable imitation
24 of any of Microsoft’s registered trademarks, service mark, or copyrights, including,
25 but not limited to, the Trademark, Service Mark, and Copyright Registration
26 Numbers listed in Sections (2)(a) above;

27 (c) using any simulation, reproduction, counterfeit, copy, or
28 colorable imitation of Microsoft’s registered trademarks, service mark, or copyright

1 including, but not limited to the Trademark, Service Mark, and Copyright
2 Registration Numbers listed in Section (2)(a) above, in connection with the
3 manufacture, assembly, production, distribution, offering for distribution,
4 circulation, sale, offering for sale, import, advertisement, promotion, or display of
5 any software program, component, EULA, COA, and/or item not authorized or
6 licensed by Microsoft;

7 (d) using any false designation of origin or false or misleading
8 description or false or misleading representation that can or is likely to lead the
9 trade or public or individuals erroneously to believe that any software program,
10 component, and/or item has been manufactured, assembled, produced, distributed,
11 offered for distribution, circulation, sold, offered for sale, imported, advertised,
12 promoted, displayed, licensed, sponsored, approved, or authorized by or for
13 Microsoft, when such is not true in fact;

14 (e) engaging in any other activity constituting an infringement of
15 any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's
16 rights in, or right to use or to exploit, these trademarks, service mark, and/or
17 copyrights, including the distribution of any unauthorized product keys or others
18 components which would facilitate (a) through (d) above;

19 (f) assisting, aiding, or abetting any other person or business entity
20 in engaging in or performing any of the activities referred to in subparagraphs (a)
21 through (e) above.

22 (3) That the Court enter an order pursuant to 15 U.S.C. §1116(a)(d)(1)(A)
23 and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported
24 Microsoft software and/or component materials bearing any of Microsoft's
25 trademarks or service mark, and any related items, including business records, that
26 are in Defendants' possession or under their control;

27 (4) That the Court enter an order that Defendants' websites and/or the
28 corresponding domain names, or any subset of them specified by Microsoft,

1 including but not limited to mmedia.us, be disabled by the appropriate domain
2 name registries and/or the registrars holding or listing the domain names of the
3 websites.

4 (5) That the Court enter an order declaring that Defendants hold in trust,
5 as constructive trustees for the benefit of Microsoft, their illegal profits obtained
6 from the distribution of counterfeit and infringing copies of Microsoft's software
7 and/or related components, and requiring Defendants to provide Microsoft a full
8 and complete accounting of all amounts due and owing to Microsoft as a result of
9 Defendants' illegal activities.

10 (6) That the Court order Defendants to pay Microsoft's general, special,
11 actual, and statutory damages as follows:

12 (a) Microsoft's damages and Defendants' profits pursuant to 17
13 U.S.C. § 504(b), or alternatively, enhanced statutory damages pursuant to 17 U.S.C.
14 § 504(c), and 17 U.S.C. § 504(c)(2);

15 (b) Microsoft's damages and Defendants' profits pursuant to 15
16 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b), or in the alternative,
17 statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and

18 (c) Microsoft's damages and Defendants' profits pursuant to
19 California common law;

20 (7) That the Court order Defendants to pay to Microsoft both the costs of
21 this action and the reasonable attorneys' fees incurred by it in prosecuting this
22 action; and

23 (8) That the Court grant to Microsoft such other and additional relief as is
24 just and proper.

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2 DATED: January 23, 2017

PERKINS COIE LLP

3 By: /s/ Katherine M. Dugdale
4 Katherine M. Dugdale

5 Attorneys for Plaintiff
6 MICROSOFT CORPORATION
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